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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,514	08/24/2001	Jonathan L. Sessler	045404.0003	3535
20790	7590	02/11/2004	EXAMINER	
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P. 300 WEST 6TH STREET SUITE 2100 AUSTIN, TX 78701			ANDERSON, REBECCA L	
		ART UNIT	PAPER NUMBER	
		1626		

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,514	SESSLER ET AL.	
	Examiner	Art Unit	
	Rebecca L Anderson	1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 and 31-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-11 and 31-51 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

DEBORAH C. LAMBKIN
PRIMARY EXAMINER

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Claims 1-11 and 31-51 are currently pending in the instant application.

Applicants' supplemental request for consideration after final, filed 8 January 2004 has been received. Upon reconsideration, the prosecution of this application is reopened in view of the following new restriction requirement.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4, 9-11 and 49 drawn to products of the structure I variously classified in classes 540 and 548.
- II. Claim 5 drawn to polymer matrix products variously classified in class 424.
- III. Claim 6 drawn to membrane products variously classified in class 516.
- IV. Claim 7 drawn to liposome products variously classified in class 428.
- V. Claim 8 drawn to products of the structure VI variously classified in classes 540 and 548.
- VI. Claims 31 and 32 drawn to processes for the preparation of the structure I variously classified in classes 540 and 548.
- VII. Claims 33-46 drawn to methods of use for the structure I variously classified in class 514.
- VIII. Claims 50 and 51 drawn to processes for the preparation of the structure VI variously classified in classes 540 and 548.

Inventions I and VI are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the

process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make other and materially different products such as, for example, the compound of structure VI in the instant specification.

Inventions V and VIII are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make other and materially different products such as the compound of structure I in the instant specification.

Inventions I, II, III, IV and V are independent and distinct products which differ materially in structure and composition, for example, the values for n and R vary in the independent products of I and V, inventions I and V are compounds wherein invention II is a polymer matrix, invention III is a membrane and invention IV is a liposome.

Inventions VI and VIII are independent and distinct processes which differ materially in reactants and/or reaction conditions and/or products, for example, the process of group VI prepares the structure I and the process of group VIII prepares the structure VI.

Inventions I and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the

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process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product, such as, for example, aluminum hydroxide or calcium carbonate cocktails (instant specification, page 4).

Inventions [II-IV, independent products], [VI and VIII, independent processes] and VII, methods are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions II-IV are not disclosed as capable of use together since the processes of VI and VIII function is to prepare the structures of VI and I and do not prepare the polymer matrix, membrane or liposome of inventions II-IV which do not function to prepare the structures of VI and I.

Inventions V and VII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together since the methods of VII functions are disclosed as using the structure I.

Because these inventions are distinct for the reasons given above and the search required for one group is not required for the other groups, which can be seen, for example, by separate classifications of some groups, restriction for examination

purposes as indicated is proper. The inventions are independent and distinct because there is no patentable co-action between the groups and a reference anticipating one member will not render another obvious. Each group is directed to art recognized divergent subject matter which require different searching strategies for each group. Moreover, the examiner must perform a commercial database search on the subject matter of each group in addition to a paper search, which is quite burdensome to the examiner.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (571) 272-0696. Mrs. Anderson can normally be reached Monday through Friday 5:30AM to 2:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph McKane, can be reached at (571)-272-0699.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone numbers are (703) 308-1235 and (703) 308-0196.

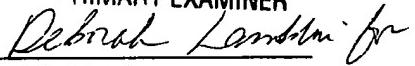
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A facsimile center has been established. The hours of operation are Monday through Friday, 8:45AM to 4:45PM. The telecopier number for accessing the facsimile machine is (703) 872-9306



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